IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

RSA.No. 654 of 2005()

AS.32/2004 of I ADDL.SUB COURT,TRIVANDRUM
OS.1162/2002 of I ADDL.M.C.,TRIVANDRUM

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APPELLANT/APPELLANT/PLAINTIFF.

GOPALAKRISHNAN NAIR, KADUKAL VEEDU,
VALIYOODU, OTTASEKHARAMANGALAM,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS/RESPONDENT/ DEFANDANT.

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1. THE KERALA STATE FINANCIAL CORPORATION,
VELLAYAMBALAM, THIRUVANANTHAPURAM REPRESENTED
BY ITS MANAGING DIRECTOR.

2. THE DISTRICT MANAGER, K.F.C. DO. DO.

BY ADV. SRI.L.MOHANAN, SC, KFC

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.1859/05 IN RSA 654/05

DISMISSED

16/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.654 OF 2005

Dated 16th March 2007

J U D G M E N T

Plaintiff in O.S.1162/02 on the file of Additional Munsiff, Thiruvananthapuram is the appellant. Respondents are defendants. Appellant filed suit seeking a decree for declaration and injunction contending that first defendant through proper publication invited tenders for sale of 15 cents of land and building in survey No.272/1A4-1 and 274/1A-6 of Ottasekharamangalam village mortgaged to first respondent and appellant submitted a quotation for purchasing property for Rs.5,00,000/- and thereafter he offered Rs.7,05,000/- which was accepted by executive committee of first respondent and appellant made all necessary arrangements for deposit of balance consideration and execution of sale deed and then appellant was served with a notice from Sub court, Neyyattinkara in O.S.4/00 filed by M/s.Trivandrum Television against respondent arraying appellant as 3rd defendant and in that suit a decree for injunction

restraining respondents from alienating the property was sought for and appellant requested respondents to make an effort for speedy disposal of the case and while so, on 19/12/2000 second respondent issued a notice calling upon appellant to remit the sale consideration and to take possession of property within 15 days and appellant sent reply on 25/10/2002 and first respondent then issued another notice calling upon appellant to pay balance consideration on 2/2/2002 and appellant sent reply stating that because of pendency of O.S.4/00 sale deed could not be executed and he also expressed willingness to get the sale deed executed but second respondent arbitrarily cancelled the confirmation of sale. It was contended that cancellation is void. Appellant sought a declaration that notice cancelling contract is void and not binding on appellant and restraining respondents from alienating or encumbering the property.

2. Respondents filed written statement admitting contract but contending that on expiry of the period appellant did not deposit the balance consideration and therefore contract was validly cancelled and appellant is not entitled to the decree for declaration or injunction sought for.

3. Learned Munsiff framed necessary issues. On the evidence of PW1, Exts.A1 to A10 and Exts.B1 to B8 learned Munsiff found that appellant did not pay the bid amount in spite of notice sent by respondents and therefore cancellation of the contract is valid and appellant is not entitled to the decree sought for. Suit was dismissed. It was challenged before Sub court in A.S.32/04. While first appeal was pending appellant approached this court in W.P.C.20547/04 whereunder Ext.A13 order was passed directing appellant to deposit 30% of the bid amount. It was deposited by appellant under Exts.A15 and A16. Learned Sub Judge after re-appreciation of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in the second appeal.

4. Before admitting second appeal notice was issued to respondent before admission. At that stage appellant submitted that they are prepared to pay the amount of Rs.9,05,000/- which is the bid amount deducting 30% already deposited, if respondent is prepared to receive the same. Thereafter, learned counsel appearing for respondent, Kerala Financial Corporation, under instructions from the party agreed to receive the amount if appellant is prepared to pay the

same within 15 days. Therefore on 1/3/2007 an order was passed permitting appellant to deposit the amount as agreed within 15 days. When the case was taken up today learned counsel appearing for appellant submitted that appellant could not pay the amount.

5. Learned counsel appearing for appellant and respondent were heard.

6. Learned Munsiff and learned Sub Judge on appreciation of evidence found that appellant was not prepared to pay the balance of the bid amount even though respondents sent notice calling upon appellant to deposit the balance amount. In such circumstances, respondent cancelled the contract which was challenged in the suit as invalid. Courts below found that cancellation was valid and appellant is not entitled to the decree sought for. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.